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EXAMINER
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL C. ZIEGLER and GLENN W. ALEXANDER

Appeal 2009-002345
Application 10/084,795
Technology Center 3600

Decided: August 24, 2009

Before WILLIAM F. PATE III, JOHN C. KERINS, and
MICHAEL W. O'NEILL, *Administrative Patent Judges*.

WILLIAM F. PATE III, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

This is an appeal from the final rejection of claims 1, 5-9, 16 and 22. These are the only claims remaining in the application. We have jurisdiction over the appeal pursuant to 35 U.S.C. §§ 134 and 6.

The claimed subject matter is directed to a ceiling system having a grid formed from a plurality of parallel-extending main runners and a plurality of cross runners and a plurality of compression straps attaching the grid to the rib support system. Each of the main runners and cross runners have a vertical web with a bulb portion. A plurality of clips attach the runners to the compression struts with the bulb interposed between the clip and the compression struts.

Claim 1, reproduced below, is further illustrative of the claimed subject matter.

> 1. A ceiling system comprising:
>
> a grid formed from a plurality of parallel-extending main runners and a plurality of cross runners extending between the main runners, each main runner having a vertical web and a bulb portion;
>
> a plurality of compression struts;
>
> a plurality of panels resting within the grid; and
>
> a plurality of clips, each clip having a first leg, a second leg and a mid-portion disposed between the first leg and the second leg;
>
> wherein each of the plurality of compression struts and each of the plurality of clips are discrete parts;

wherein each first leg is in direct contact with and is secured to the vertical web of the main runner, each second leg is in direct contact with and is secured to the compression strut and each mid-portion conforms to the bulb portion of a main runner, the bulb portion being interposed between the compression strut and the mid-portion.

REFERENCES

The references of record relied upon by the Examiner as evidence of obviousness are:

Cumber	US 3,599,921	Aug. 17, 1971
Carraro	US 4,723,749	Feb. 9, 1988
Pinquist	US 4,905,952	Mar. 6, 1990

REJECTIONS

Claims 5 and 16 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 8, 9 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carraro in view of Pinquist and Cumber.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Carraro in view of Cumber.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Carraro in view of Pinquist and Cumber.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carraro in view of Pinquist and Cumber.

Claim 16 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Carraro in view of Cumber.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellants and the Examiner. As a result of this review, our conclusions of law are that claims 5 and 16 are not indefinite under the purview of 35 U.S.C. § 112, second paragraph, and that the subject matter of all of the claims on appeal is not prima facie obvious from the applied prior art. Accordingly, the rejections of all of the claims on appeal are reversed.

The Examiner has rejected claims 5 and 16 under 35 U.S.C. § 112, second paragraph, as indefinite, because these claims refer to an Up-lift classification which is a classification developed by Underwriters Laboratories. The Examiner states that these tests are subject to change. While we agree with the Examiner that these tests are subject to change and often are modified, we are of the view that the test in force when the application was filed may be readily assessed by anyone endeavoring to determine the scope of the claimed subject matter. Thus, one of ordinary skill could readily determine the metes and bounds of the claimed subject matter. Accordingly, it is our conclusion of law that the claims are not indefinite under the second paragraph for the recitation of standard Underwriters Laboratories' compliance tests.

Turning to the obviousness rejections, Appellants argue that the vertical portion 30 of the fastener of Carraro shown in Figs. 4 and 5 is not a compression member. We disagree with this argument of the Appellants, and agree with the Examiner that this satisfies the claims' limitation of a compression member.

On the other hand, Appellants argue that the bulb portion 77 of the runners shown in Figs. 4 and 5 of Carraro is not interposed between the compression strap and the mid portion of the clip as required in claims 1 and 9. We agree with this argument of Appellants, inasmuch as the compression member 30 is above the connecting portion 31 of the fastener, and the structure of Carraro cannot be fairly read as having a bulb portion between the compression member and the mid portion of the clip. Neither Pinquist nor Cumber can cure this defect in the teaching of Carraro. Accordingly, we are constrained to reverse the rejections of claims 1, 5-9, 16, and 22 under § 103.

CONCLUSIONS OF LAW

Appellants have established that the Examiner erred in rejecting claims 5 and 16 under 35 U.S.C. § 112, second paragraph. The rejection of these claims is reversed.

Appellants have also established that the Examiner erred in rejecting claims 1, 5-9, 16 and 22 under 35 U.S.C. § 103(a). The rejections of these claims are reversed.

REVERSED

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